

SENATE CHAMBER,
AUSTIN, TEXAS, Friday, February 24, 1871. }

Senate met pursuant to adjournment; Hon. Don Campbell, President, in the chair.

Roll called; quorum present.

Prayer by the Chaplain.

On motion of Senator Pyle the reading of the journal was dispensed with.

PETITIONS AND MEMORIALS.

By President Campbell: Petition of citizens of Lake City, Kellyville, asking prohibition of sale of spirituous liquors, etc. Read and referred to Committee on Education.

Message from the House by Chief Clerk, transmitting for concurrence the following House bills:

House bill No. 68, "An act to incorporate the town of Millican, county of Brazos."

Also, House bill No. 71, "An act to incorporate the Jefferson Steam Fire Company No. 1, of the city of Jefferson."

Also, House bill No. 74, "An act to incorporate the Richland Bridge Company."

Also, House bill No. 75, "An act to authorize G. W. B. T. Davis to erect a toll bridge over Pin Oak Creek, in Navarro county."

Also, House bill No. 83, "An act to prevent the introduction and spreading of the scab among sheep."

Also, House bill No. 84, "An act to incorporate the San Antonio Jockey Club."

Also, House bill No. 107, "An act to incorporate the Agricultural, Mechanical and Blood Stock Association of Jasper, Texas."

Also, House bill No. 108, "An act to incorporate the Land Owners' Association of Texas."

Also, House bill No. 111, "An act to incorporate the Homestead Land Company."

Also, House bill No. 116, "An act to incorporate the Indianola Hook and Ladder Company No. 1, of the city of Indianola."

Also, House bill No. 117, "An act to incorporate the Marion county Bayou Navigation Company."

Also, House bill No. 208, "An act to incorporate the Little Brazos River Bridge Company."

By Senator Bowers: petition from the citizens of Bell county. Read, and on motion of Senator Bowers, referred to the select committee to whom was referred Senate bill No. 93, "An act to incorporate the Leon Bridge Company."

REPORTS OF STANDING COMMITTEES.

Reports of Committees on State Affairs:

COMMITTEE ROOM,
AUSTIN February 24, 1871.

Hon. DON CAMPBELL.

President of the Senate:

SIR: Your Committee on State Affairs, to whom was referred Senate bill No. 42, entitled "An act to incorporate the Merchants' and Planters' Savings Bank of Texas," have given the same due consideration, and report it back, recommending its passage, with the following amendments, to-wit:

Amend section 1, in line 1, by striking out all after the word "enacted" down to and including the word "convened," and insert in lieu thereof the following words, "by the Legislature of the State of Texas."

Amend section 4, in line 35, by striking out all after the word "effect," down to and including line 38, and insert the words "subject to the general laws of the State."

Amend, by striking out all of section 9 marked "A."

Amend, by striking out all of section 11, and insert as section 11 the following words: "This act shall take effect and be in force for fifty years from and after its passage."

S. W. FORD,
Chairman.

Report read, and laid over under the rules.

COMMITTEE ROOM,
AUSTIN, February 24, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on State Affairs, to whom was referred Senate bill No. 126, entitled "An act to incorporate the town of Marlin, Falls county," have duly considered the same, and hereby return it recommending its passage.

S. W. FORD,
Chairman.

Report read, and laid over under the rules.

Majority report of Committee on Education:

COMMITTEE ROOM,
AUSTIN, February 23, 1871.

Hon. DON CAMPBELL.

President of the Senate :

SIR: A majority of your Committee, to whom was referred a bill entitled "An act to organize and maintain a system of public free schools in the State of Texas," would respectfully represent that they have had the same under careful consideration, and I am instructed to report it back to the Senate and recommend the accompanying substitute.

E. PETTIT,
Chairman.

Substitute for Senate bill No. 166, "An act to establish a system of public free schools in the State of Texas." Report and substitute read first time and laid over under the rules.

BILLS AND RESOLUTIONS.

By Senator Bowers: Senate joint resolution No. 18, "Joint resolution proposing to amend the forty-sixth section, article 12, of the Constitution of the State of Texas." Read first time and referred to Committee on Judiciary.

By Senator Bowers: a bill (Senate bill No. 181) to be entitled "An act to incorporate the Brazos Navigation Company." Read first time and referred to Committee on Internal Improvements.

By Senator Douglass: a bill (Senate bill No. 182) to be entitled "An act to incorporate the Tyler Tap Railroad Company," read first time and referred to Committee on Internal Improvements.

By Senator Shannon: a bill (Senate bill No. 183) to be entitled "An act to incorporate the Masonic Joint Stock Company at the town of Cleburne, Johnson county," read first time and referred to Committee on Judiciary.

Also, a bill (Senate bill No. 184) to be entitled "An act to amend the Penal Code," read first time and referred to Committee on Judiciary.

By Senator Tendick: (Senate joint resolution No. 19) "Joint resolution authorizing and requiring the Commissioner of the General Land Office to issue sixteen sections of six hundred and forty acres of land certificates for each lineal mile, in accordance with section eleven of 'An act entitled an act to incorporate the Columbus Tap Railway Company,' " read first time and referred to Committee on Internal Improvements.

By Senator Pickett: a bill (Senate bill No. 185) to be entitled "An act supplementary to the several acts now in force to regulate

railroad companies," read first time and referred to Committee on Judiciary.

By Senator Pridgen: Senate joint resolution No. 20, "Joint resolution authorizing the sale of the Houston Tap and Brazoria Railway," read first time.

Senator Pridgen moved a suspension of the rules to consider the resolution.

Senator Pickett moved to refer it to a select committee of three, which motion was adopted.

The President appointed on said committee Senators Pickett, Pridgen and Bell.

Senator Bell moved that Senators Ruby and Parsons be added to the select committee, which motion was adopted.

By Senator Bowers: a bill (Senate bill No. 186) to be entitled "An act to provide for the more permanent preservation of the graves in the State Cemetery at Austin, Texas," read first time.

On motion of Senator Ruby, the rules were suspended to consider Senate bill No. 186, which was read second time.

Senator Douglass moved to amend by striking out in section one, line eight, the word "limestone" and insert in lieu thereof the word "marble," which motion was adopted.

Senator Douglass moved to amend section one, line eleven, by striking out the words "twenty-five dollars," and insert in lieu thereof the words "forty dollars," which motion was adopted, and Senate bill No. 186 ordered engrossed and passed to a third reading, as amended.

On motion of Senator Flanagan, the rules were further suspended and Senate bill No. 186 read third time.

Senator Bowers moved to amend section two, line one, by striking out the words "five hundred dollars" and insert in lieu thereof the words "six hundred dollars."

Senator Flanagan moved to amend the amendment by inserting "one thousand dollars" in lieu of "six hundred dollars," which motion was adopted.

Senator Douglass moved to amend by striking out in section one, line eight, the words "the top of," which motion was adopted.

On motion of Senator Flanagan Senate bill No. 186 passed by the following vote:

Yeas—Mr. President, Baker, Bell, Bowers, Braughton, Cole, Dillard, Dohoney, Douglass, Evans, Flanagan, Ford, Fountain, Gaines, Hall, Hertzberg, Hillebrandt, Latimer, Mills, Parsons,

Pettit, Pickett, Pridgen, Pyle, Rawson, Ruby, Saylor, Shannon, Tendick—29.

Nays—None.

Senator Braughton moved a suspension of the rules to take from file Senate bill No. 87, "An act to organize and incorporate the East Line and Red River Railroad Company of Texas."

The yeas and nays called for and the rules suspended by the following vote.

Yeas—Mr. President, Bowers, Braughton, Cole, Dillard, Douglass, Evans, Flanagan, Fountain, Hall, Hertzberg, Latimer Mills, Parsons, Pettit, Pridgen, Pyle, Rawson, Saylor, Shannon, Tendick—21.

Nays—Baker, Bell, Dohoney, Ford, Gaines, Hillebrandt, Pickett, Ruby—8.

On motion of Senator Braughton Senate bill No. 87 was made the special order for Monday next, at 12 M.

On motion of Senator Gaines the rules were suspended to take from file House bill No. 64, "An act to authorize the county court of Washington county to levy a special tax for building a jail at the county seat."

Read first time.

On motion of Senator Gaines the rules were further suspended and House bill No. 64 read second time and passed to a third reading.

On motion of Senator Flanagan the rules were further suspended and House bill No. 64 read a third time, and passed by the following vote:

Yeas—Mr. President, Baker, Bell, Bowers, Braughton, Cole, Dillard, Dohoney, Douglass, Evans, Flanagan, Ford, Fountain, Gaines, Hall, Hertzberg, Hillebrandt, Latimer, Mills, Parsons, Pettit, Pridgen, Pyle, Rawson, Ruby, Saylor, Shannon, Tendick—28.

Nays—None.

12 M.

The hour having arrived for the consideration of the special order, Senate bill No. 94, "An act to give effect to the several provisions of the Constitution concerning taxes," the Senate resolved itself into Committee of the Whole.

IN SENATE.

Senator Flanagan, Chairman of the Committee of the Whole, having under consideration Senate bill No. 94, reported progress and asked leave to sit again to-morrow at 11½ A. M.

Report received and leave granted.

Senator Baker offered the following resolution:

Resolved, That, until otherwise ordered, the Senate will meet at 8 o'clock P. M., for the consideration of private bills, and that the roll of Senators shall be called, and that each Senator shall have the privilege, when his name is called, of calling up such private bill as he may desire.

Senator Pickett moved to adjourn to 11 A. M., to-morrow, which was lost by the following vote:

Yeas—Bell, Bowers, Dillard, Gaines, Latimer, Pettit, Pickett, Saylor, Shannon—9.

Nays—Mr. President, Baker, Cole, Dohoney, Douglass, Evans, Flanagan, Ford, Fountain, Hall, Hertzberg, Hillebrandt, Mills, Parsons, Pridgen, Rawson, Ruby, Tendick—18.

The question recurring on the resolution offered by Senator Baker, Senator Bowers offered the following substitute:

Resolved, That unless some other hour be fixed for the meeting of this body, hereafter the hour of ten o'clock, A. M., will be fixed as the hour at which the Senate shall meet.

Resolved, That until otherwise ordered by a vote of the majority of Senators present, the Senate will on Monday, Wednesday and Friday of each week meet at three o'clock, P. M., for the consideration of private bills alone.

Senator Gaines moved to adjourn to 10 A. M., to-morrow, which motion was lost.

On motion of Senator Fountain the substitute offered by Senator Bowers was adopted.

By leave Senator Fountain submitted the following report of the Committee on Judiciary:

To the honorable Senate of the State of Texas:

Your memorialist, J. M. Thurmond, Judge of the Thirty-first Judicial District, Texas, would most respectfully ask that the subjoined copy of a letter addressed by me to his Excellency, Edmund J. Davis, may be read in open session of the Senate and spread upon its journals, in my own vindication and in behalf of the administration and independence of the judiciary.

I have the honor to remain your obedient servant,

J. M. THURMOND,

Judge of the Thirty-first Judicial District.

CALVERT, February 1, 1871.

To his Excellency,

EDMUND J. DAVIS,

Governor:

I have the honor to inform your Excellency that while at Austin a number of my friends desired that I should accept (if tendered to

me) a judgeship in one of the more northern districts of the State. As I would have preferred an appointment in that section of Texas, I delivered to Senator P. W. Hall, before leaving Austin, a blank resignation of my office as Judge of the Thirty-first District, with a request that he should fill the date (which was left blank) and present the same to you in the event of my being nominated and confirmed as judge of one of the more northern districts.

I believe that all the judges of the State are now appointed, and I was pained to learn, on returning home yesterday, it had been reported that my position on the bench was subject to the discretion of Senator Hall, who might at any time deliver my resignation.

Senator Hall is a practicing lawyer before my courts; his brother is sheriff of one county in my district (Robertson) and is now a party to a very important suit before me. Your Excellency will see how much the independence and efficiency of the judiciary would be impaired should I remain silent under such a report. Suspicion and distrust would arise among the other members of the bar; the confidence of the entire public lost, the majesty of the law would receive a fatal wound through the supposed subserviency of myself, as its exponent, and my influence to accomplish the ends of justice destroyed forever.

I therefore now inform your Excellency of the facts which gave origin to the report, and though I have now no idea of resigning my judgeship, yet should I ever do so, will re-visit Austin and *deliver my resignation in person*.

I have sent a revocation of the blank resignation, mentioned, to Senator Hall, and do hereby cancel and revoke the same, being unwilling that the judiciary, the great Republican party of which I am an humble member, or the administration of your Excellency, should be injured by my silence.

I cheerfully acquit Senator Hall, who is my personal friend, of all intention to injure me, and desire, in behalf of the party and independence of the judiciary, that this refutation of the slander contained in the report, may, in my own vindication, be read to the Senate and spread upon its minutes.

I have the honor to remain your obedient servant,

J. M. THURMOND,

Judge of the Thirty-first Judicial District, Texas.

WHEREAS, The Governor of the State of Texas, did, on the seventeenth day of February, send into the Senate the name of John Rector, asking his confirmation to the judgeship of the Thirty-first District, vice Thurmond resigned; and

Whereas, it is not clear to the Senate that said Thurmond has re-

signed said judgeship, nor is this Senate satisfied that a vacancy exists in said Thirty-first District; therefore be it

Resolved, That the Judiciary Committee be required to investigate the question as to the vacancy in the Thirty-first District, and be authorized to send for persons and papers.

COMMITTEE ROOM,
AUSTIN, February 23, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, to whom was referred the foregoing memorial and resolution, with instructions to investigate the questions involved therein, beg leave to report that they have performed that duty and submit the following as the result :

In the letter addressed to his Excellency, the Governor, which is made a part of the above named memorial, Judge Thurmond states that while in Austin a number of his friends having desired that he should accept (if tendered) a judgeship in one of the more northern districts, he delivered to Senator Hall a blank resignation of his office as judge of the Thirty-first Judicial District, which resignation was to be used in the event of his (Thurmond's) being appointed to another district.

In this statement he seeks to convey the impression that he delivered his resignation to Senator Hall voluntarily, and subsequent to his appointment as Judge of the Thirty-first District, and that it was a conditional resignation subject to the contingency of his being appointed to another district.

An examination into the facts of the case places it in an entirely different light.

Your committee find from the evidence adduced, that the statement made by Judge Thurmond, in his letter to his Excellency, the Governor, (which letter was spread upon the journals of the Senate at the request of Judge Thurmond) is certainly not in accordance with the facts of the case as proven before your committee, who find the facts to be as follows: About the time of the appointment of Judge Thurmond to the Thirty-first District, certain charges affecting his integrity had been made to the Governor, and, although these charges were denied and explained in writing by Thurmond, a doubt existed with the Governor as to the propriety of appointing him, whereupon Thurmond agreed to deposit, and did deposit, in the hands of Senator Hall, an unconditional written resignation, which was to be delivered to the Governor by Senator Hall whenever his Excellency, becoming satisfied that Thurmond lacked the integrity necessary to fill a high judicial position, saw proper to demand it.

The following is a correct copy of this resignation, which was laid before your committee, and which is proved to be entirely Judge Thurmond's writing.

" CALVERT, TEXAS,

" To his Excellency, Governor State of Texas :

" SIR: I beg leave to most respectfully tender my resignation as Judge of the Thirty-first Judicial District, State of Texas.

" I have the honor to remain your obedient servant,

[Signed]

J. M. THURMOND.

" Hon. P. W. Hall is hereby authorized to present this resignation to his Excellency, the Governor ———

[Signed]

J. M. THURMOND."

Your committee further find from the evidence adduced that the making of this resignation was demanded by the Governor, as a condition precedent to Thurmond's appointment, in order that his Excellency might, by accepting the resignation, remove Thurmond from the bench, should the charges against his integrity prove well founded. In the judgment of his Excellency, Judge Thurmond's letter, that was spread on the journals of the Senate, contained such a perversion of truth as to warrant his Excellency in the belief that Thurmond was an improper person to hold the position he occupied, and he accordingly called in and accepted the resignation.

Your committee having submitted the facts in the case for your action, respectfully ask to be discharged from further consideration of the subject.

A. J. FOUNTAIN,
Chairman.

Report read and laid over under the rules.

On motion of Senator Ruby the Senate adjourned to 11 A. M., to-morrow.